performance of the contract. *Held*, that he cannot recover. *Moore and Bridgman* v. *U. S. Fidelity and Guaranty Co.*, 113 S. W. 947 (Tex., Civ. App.).

Garnishment in no way changes the situation of the parties except that the defendant's claim against the garnishee is thereby transferred to the plaintiff. *North Chicago Rolling Mill Co.* v. *St Louis Ore and Steel Co.*, 152 U. S. 596. A garnishee loses none of those rights of set-off and defense which existed or were actually accruing at the time of the service of attachment and which might have been asserted by him had the defendant himself sought to enforce the claim. *Farmers' and Merchants' Bank* v. *Franklin Bank*, 31 Md. 404. Nor are his rights enlarged. See *Fifield* v. *Wood*, 9 Ia. 249. On these principles a factor receiving goods for sale and making advances thereon cannot, by garnishment, be deprived of his right to sell. *White Mountain Bank* v. *West*, 46 Me. 15. Moreover, the garnishee is entitled to the benefit of any existing contract he may have with the defendant. *Baltimore and Ohio R. R. Co.* v. *Wheeler*, 18 Md. 372. So, in the principal case, the contract was in no way affected. Recovery on an attachment bond is limited to such damages as are the direct result of the wrongful attachment. *Higgins* v. *Mansfield*, 62 Ala. 267. But a misconception by the garnishee of the legal consequences of the attachment cannot be considered such a direct result. *Goodbar* v. *Lindsley*, 51 Ark. 380.

HABEAS CORPUS — LEGAL EXISTENCE OF COURT ATTACKED IN HABEAS CORPUS PROCEEDINGS. — The relator, who had been convicted and sentenced to imprisonment, brought a writ of *habeas corpus*, alleging that the court that tried him was not legally created, in that the legislative act on which it was founded had been vetoed by the governor, and not passed by a sufficient majority thereafter. *Held*, that the legal existence of a court organized and created under color of law cannot be inquired into in *habeas corpus* proceedings. *State ex rel. Bales* v. *Bailey*, 118 N. W. 676 (Minn.).

Unless a court is created by the constitution or by a valid act of the legislature, it has no jurisdiction. *Re Norton*, 64 Kan. 842. And all proceedings before a court without jurisdiction are void. *Ex parte Jones*, 27 Ark. 349. So an imprisonment by such a court is an unlawful detention of the person, for which relief is given by *habeas corpus*. *People* v. *McLeod*, 1 Hill (N. Y.) 377. But it is believed that when jurisdiction depends on the constitutionality of a statute, the statute should not be tested in such hurried proceedings; though, it is true, this contention does not seem to be universally supported by the authorities. See *Ex parte Snyder*, 64 Mo. 58; *Ex parte Pitts*, 35 Fla. 149. The Minnesota rule, however, as here laid down, is based on the supposedly analogous case of a *de facto* judge, it being settled that his position cannot be attacked collaterally. See *Burt* v. *Winona & St. Peter R. Co.*, 31 Minn. 472. But the analogy fails; for whereas a *de facto* court has no jurisdiction, the very existence of a *de facto* judge depends on the existence of a *de jure* court, and his acts are binding on third parties and are only reviewable by the state. *Clark* v. *Commonwealth*, 29 Pa. St. 129. See *Norton* v. *Shelby County*, 118 U. S. 425.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — COMMISSION'S POWER TO INTERROGATE. — In the course of an investigation the Interstate Commerce Commission interrogated the defendant with the object of ascertaining whether the directors of a railroad engaged in interstate business had expended its funds while the defendant was an officer of the railroad in buying stocks at inflated prices, or stocks that should not have been purchased. On refusal to answer, suit was instituted to compel him to do so. *Held*, that he need not answer. *Interstate Commerce Commission* v. *Harriman*, U. S. Sup. Ct., Dec. 14, 1908.

This decision reverses the decision of the lower court, commented upon in 21 HARV. L. REV. 431.

JUDGMENTS — SATISFACTION — EFFECT OF EXECUTION SALE OF EXEMPT PROPERTY. — A judgment creditor levied on and sold property of the

debtor in satisfaction of his judgment. The property was exempt from execution, and the debtor recovered damages against the creditor in trespass. He later moved to have the judgment against him entered as satisfied. *Held*, that the sale satisfies the judgment. *Johnson* v. *Motlow*, 47 So. 568 (Ala.).

If, by reason of any defects in the execution or proceedings thereon, no title passes by a judgment sale, the satisfaction is set aside and the creditor may still enforce his original judgment. *Townsend* v. *Smith*, 20 Tex. 465. But if the sale fails to pass any title because the debtor has no title to the property sold, it has been held that the judgment is irrevocably satisfied. *Vattier* v. *Lytle's Executors*, 6 Oh. 478; *Halcombe* v. *Loudermilk*, 48 N. C. 491. Other courts have held that in these circumstances the satisfaction should be vacated, and the creditor allowed to recover on his first judgment. *Adams* v. *Smith*, 5 Cow. (N. Y.) 280; *Cowles* v. *Bacon*, 21 Conn. 451. The latter view seems to be the better; for a proceeding which transfers no legal title and deprives the debtor of nothing, should not operate in satisfaction of a judgment against him. The situation in the principal case is similar. The property which formed the subject of the sale being exempt from execution, the creditor derives no real benefit from the sale. It is therefore submitted that such a sale should not be regarded as satisfying the judgment. *Piper* v. *Elwood*, 4 Den. (N. Y.) 165.

LANDLORD AND TENANT — COVENANTS IN LEASES — WHETHER COVENANT INDIRECTLY AFFECTING VALUE RUNS WITH LAND. — A lease from A to B contained a proviso for reëntry in case of breach of B's covenant to repair. In making a sublease of part of the premises to C, B covenanted that he would repair the part of the premises retained. The defendant, B's assignee, failed to repair, whereupon A reëntered and ejected the plaintiff, C's assignee. *Held*, that B's covenant to C did not run with the land sublet so as to give C's assignee a right of action. *Dewar* v. *Goodman*, 25 T. L. R. 137 (Eng., H. of L., Dec. 3, 1908).

This decision affirms the decision of the lower court, commented upon in 20 HARV. L. REV. 577.

LICENSES — REVOCATION AFTER LICENSEE HAS ACTED ON PAROL LICENSE AND INCURRED EXPENSE. — B was given a parol license to erect a telephone line across A's land. B thereupon incurred expense, acting on the license. *Held*, that the license is revocable. *Yeager* v. *Tuning*, 6 Oh. L. Rep. 94 (Oh., Sup. Ct., Dec. 1, 1908).

To hold the license irrevocable would violate the Statute of Frauds unless it can be justified by the doctrine of equitable estoppel. See 13 HARV. L. REV. 54. But a license in itself does not involve a representation that it will not be revoked. See *Babcock* v. *Utter*, 1 Abb. Dec. (N. Y.) 27, 60. The only plausible basis for estoppel here, therefore, lies in extending the equitable doctrine of part performance. *Potter* v. *Jacobs*, 111 Mass. 32. See 14 HARV. L. REV. 64. But this doctrine is contrary to the spirit of the Statute of Frauds and therefore has been confined strictly to cases where the terms of the contract are clear. *Phillips* v. *Thompson*, 1 Johns. Ch. (N. Y.) 131, 149; *Allen* v. *Webb*, 64 Ill. 342. Where a mere license is given there is no express agreement to grant an easement, and it is by no means certain that the parties so intend. To imply such an agreement and then enforce it on the doctrine of part performance, is an inexcusable extension of that much doubted doctrine. If the Statute of Frauds is a wise enactment, the true equity lies in following it, not in evading it by converting a parol license into an easement.

MORTGAGES — PRIORITIES — PURCHASE MONEY MORTGAGE AND JUDGMENT LIEN. — A executed a deed of land to B, who simultaneously executed a security deed to C for part of the purchase price, which C paid over to A. The deeds were duly recorded. There was a prior recorded judgment against B. *Held*, that the mortgage is superior to the judgment lien. *Protestant Episcopal Church* v. *Lowe*, 63 S. E. 136 (Ga., Sup. Ct.).

A purchase money mortgage to the vendor executed simultaneously with his